

PT 03-33

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**FIRST KOREAN UNITED
METHODIST CHURCH,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No: 02-PT-0022
(00-16-2606)
P.I.N: 03-13-101-029**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. Donald Schramm and Glenn Guttman of Rieff, Schramm & Kanter on behalf of the First Korean United Methodist Church (the “applicant”); Mr. Michael Abramovic, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This matter raises the limited issue of whether any part of real estate identified by Cook County Parcel Index Number 03-13-101-029 (the “subject property”) was “used exclusively for religious purposes,” as required by 35 ILCS 200/15-40 during the 2000 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review on March 9, 2001. The Board reviewed applicant’s petition and recommended to the Department that the subject property be exempt as of February 8, 2000. On January 31, 2002, the Department issued its initial determination in this matter,

denying the requested exemption *in toto* on grounds that the subject property was not in exempt use at any point during the 2000 assessment year. Dept. Ex. No. 1.

Applicant filed an appeal as to this denial and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department's determination be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position herein, are established by the admission of Dept. Ex. Nos. 1, 2, 3.
2. The Department's position in this case is that the subject property was not in exempt use during any part of the 2000 assessment year. Dept. Ex. No. 1.
3. The subject property consisted of a 6.99 acre (304,441 sq. ft.) tract of unimproved land throughout 2000. Dept. Ex. No. 2.
4. Applicant and the Department have stipulated to the following relevant facts:
 - A. Applicant is a duly chartered affiliate of the Northern Illinois Conference of the United Methodist Church (Stipulation, ¶ 1);
 - B. Applicant's organizational purposes include: (1) passing on the spirit of Korea and the spiritual tradition of the Korean church to the greater Chicagoland area that it serves; (2) teaching and learning the Bible (Old and New Testaments) as the living word of God; (3) proclaiming the Good News to people of all nations through the world mission ministry; and, (4) nurturing and cultivating leaders for the next generation with a vision for the 21st century (Stipulation, ¶ 2);

- C. Applicant's main church facility, located in Chicago, IL and situated on real estate identified by Cook County Parcel Index Number 13-11-426-016, was exempt from real estate taxation throughout the 2000 assessment year (Stipulation, ¶ 8);
 - D. Applicant acquired ownership of the subject property via a warranty deed dated February 8, 2000 (Stipulation, ¶ 2);
 - E. Applicant did not lease any part of the subject property to any third party throughout the 2000 assessment year (Stipulation, ¶ 7).
- 5. Applicant acquired ownership of the subject property with the intention of constructing a new facility that would accommodate its need for additional parking and serve the needs of the growing number of its church members that were relocating to the Northwest suburbs. Tr. pp. 8-9.
 - 6. The subject property was located in unincorporated Cook County throughout the 2000 assessment year. Applicant Ex. No. 4.
 - 7. Applicant could not begin the subject property unless and until the Village of Wheeling (the "Village") annexed the subject property into its corporate limits. *Id.*
 - 8. The subject property was zoned for restricted or limited industrial uses throughout the 2000 assessment year. Tr. p.79.
 - 9. Under applicable municipal zoning ordinances, the applicant was required to obtain a special use permit from the Village in order to effectuate a change in zoning that would permit the applicant to use the subject property as a church facility. Administrative notice of the Municipal Code of Wheeling, Chapters 19.52.035, 19.52.030, 19.56.030, 19.92.010, 19.92.005 and 19.92.010(11).¹

1. For further discussion as to the legal effect of these provisions, *see infra* at pp. 6-9.

10. The Village did not adopt ordinances annexing the subject property into its corporate limits, and providing the applicant with the required special use and site plan approvals, until March 12, 2001. Applicant Ex. Nos. 7A, 7-B.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-40 and 15-125 of the Property Tax Code 35 ILCS 200/1-1 *et seq.* Section 15-40 provides, in relevant part, for exemption of the following:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit ...[.]

35 ILCS 200/15-40.

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, it is applicant that bears the burden of proving, by clear and convincing evidence, that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

The word "exclusively," when used in Sections 200/15-40 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, "religious purposes" refers to those uses by religious societies or persons as stated places for public worship, Sunday schools and religious instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

The sole question presented in this case is whether applicant used the subject property "exclusively" or primarily for purposes that qualify as "religious" within the meaning of Section 15-40 during the 2000 assessment year. It is well established that each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980). Consequently, the one and only state of affairs that is relevant to the outcome of this place is the one that took place during the 2000 assessment year, which ran from January 1, 2000 through December 31, 2000.²

Furthermore, applicant's actual, and not intended, use of the subject property is decisive for present purposes. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). This case is one wherein the applicant was attempting to adapt and develop the subject property for future "religious" uses throughout the tax year in question. Such adaptation and development can constitute exempt use if the applicant

2. Section 1-155 of the Property Tax Code defines the term "year" for Property Tax purposes as meaning a calendar year. 35 ILCS 200/1-155.

moves beyond preliminary planning, and into active development during the tax year in question. *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but completely vacant throughout the tax year in question held non-exempt) *with* People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (all portions of seminary property being actively developed for seminary-related purposes, except one tract that was totally undeveloped throughout relevant tax year, held exempt); Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt).

In analyzing whether or to what extent this applicant engaged in an appropriate level of exempt use, I am required to evaluate the efforts that applicant made to develop the subject property during 2000 in light of the realities of modern construction and applicant's ultimate intended use. Weslin Properties v. Department of Revenue, *supra*; Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828, 834 (3rd Dist. 2000). Thus, it cannot be denied that building a modern church facility and related parking area³ on a tract of land as large as the subject property is an extremely complicated undertaking. At the same time,

3. The exemption statute that pertains to parking areas is found at 35 ILCS 200/15-125, which states that:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation].

35 ILCS 200/15-125. *See also*, Northwestern Memorial Foundation v. Johnson, 141 Ill. App.3d 309 (1st Dist. 1986).

however, public policy dictates that an administrative agency cannot fail to recognize or decline to enforce the otherwise valid legal constraints that govern all of the endeavors that applicant must undertake throughout the developmental process.

I take administrative notice that certain zoning-related provisions of the Municipal Code of Wheeling (the “Municipal Code”) rendered it legally impossible for applicant to use the subject property for “religious” purposes throughout 2000. The initial series of these provisions, contained in Chapters 19.52.30,⁴ 19.52.035⁵ and 19.56.30⁶ of the

4. Chapter 19.52.30 of the Municipal Code of Wheeling states as follows:

19.52.030 Permitted uses.

Any building or premises within the I-1 restricted industrial district shall be used only for the following purposes: 1) Business and professional offices, excluding medical and dental offices, at a parking standard of one space per two hundred fifty square feet of floor area; 2) Compounding, processing and blending of chemical products, including drugs and cosmetics; 3) Contractors’ offices and shops, where fabricating and all storage of material is within an enclosed building; 4) Dyeing and cleaning works and laundries; 5) General administrative offices, accessory to the principal use; 6) Greenhouses and nurseries; 7) Laboratory or research establishments; 8) Machine shops and metal products manufacture, and tool and die shops; 9) Manufacture, compounding, assembly, processing and storage of merchandise from cork, paper, leather (exclusive of tanning or tanneries), aluminum, plastics, wood, metal and glass; 10) Manufacturing, packing and storage of food or beverage for human consumption; 11) Parking and loading, subject to this title; 12) Processing, fabricating and assembling of light-weight products, packaging, printing and binderies; 13) Public utilities and public service establishments and installations; 14) Sales offices; 15) Signs, subject to this title; 16) Warehouses; 17) Accessory buildings incidental to the foregoing, subject to this title; [and] 18) Retail sales or services, accessory to the principal use.

Municipal Code of Wheeling, Ch. 19.52.30.

5. Chapter 19.52.035 of the Municipal Code of Wheeling states as follows:

Permitted uses restricted to the I-1 district.

Municipal Code, effectively restricted use of the subject property to the limited industrial or restricted industrial uses for which it was zoned throughout 2000.

The purpose for which applicant intended to use the subject property, namely as a church facility, did not fall within any of the uses permitted by Chapters 19.52.30, 19.52.035 and 19.56.30 of the Municipal Code. More importantly, Chapters 19.92.010(11), ⁷ 19.92.005⁸ and 19.92.020⁹ of the Municipal Code specifically deemed

Permitted uses restricted to the I-1 district are as follows: Commercial schools such as, but not limited to arts and crafts studios, business, dance, martial arts and photography, subject to site plan and floor plan review and approval by the plan commission. Required parking shall be based on one space per two hundred fifty square feet of floor area of the unit or building.

Municipal Code of Wheeling, Ch. 19.52.035.

6. Chapter 19.56.030 of the Municipal Code of Wheeling states as follows:

19.56.030 Permitted uses

Permitted uses in I-2 districts are uses permitted in Section 19.52.030 of this title.

Municipal Code of Wheeling, Ch. 19.56.030.

7. Chapter 19.92.010 of the Municipal Code of Wheeling states, in relevant part, states that:

19.92.010 Permitted special uses.

The following *uses of land*, buildings and structures which, because of their unique characteristics, cannot ordinarily be classified in any particular district or districts without a consideration in each case of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location, are special uses in each zoning district, except where expressly designated as a pertained use in a particular district in this Title:

(11) Churches and other places of religious worship.

Municipal Code of Wheeling, Ch. 19.92.010(11) (emphasis added).

that use to be one falling within the special use provisions for which applicant was required to obtain appropriate approvals from the Village's corporate authorities. Furthermore, because Chapter 19.92.010 specifically includes "uses of land" within the special use provisions, it was legally impossible for applicant to make *any* "religious" use of any part of the subject property unless and until it obtained such approvals.

Applicant did not obtain the necessary approvals until March 12, 2001. Therefore, it remained legally impossible for applicant to engage in anything other than preliminary planning for its ambitious project throughout the tax year currently in question, 2000. Thus, this case is distinguishable from both People ex rel. Pearsall v. Catholic Bishop of Chicago and Weslin Properties v. Department of Revenue, in that applicants in both of those cases had: (a) ostensibly resolved any legal issues that impeded the progress of their respective projects; (b) moved beyond the preliminary

8. Chapter 19.92.005 of the Municipal Code of Wheeling states as follows:

19.92.005 Approval required.

Each use designated as a special use under the provision of this Title shall obtain special use approval by the procedure established in this Chapter.

Municipal Code of Wheeling, Ch. 19.92.005.

9. Chapter 19.92.020 of the Municipal Code of Wheeling states as follows:

19.92.020 Authorization

Special uses shall be authorized by the adoption of an ordinance by the corporate authorities; provided, however, that no application for special use shall be acted upon by the corporate authorities until after a public hearing has been held thereon by the plan commission, and the commission has prepared and transmitted to the corporate authorities its written findings and recommendations with respect to the proposed special use.

Municipal Code of Wheeling, Ch. 19.92.020.

planning stages of those projects, and, (c) began actual development of the areas in question during the relevant tax years. People ex rel. Pearsall v. Catholic Bishop of Chicago, *supra* at 17; Weslin Properties v. Department of Revenue, *supra* at 586.

The Pearsall and Weslin Properties courts also were careful to exempt only those parts of the properties at issue that were actually undergoing active adaptation and development during the tax years at issue in those cases. People ex rel. Pearsall v. Catholic Bishop of Chicago, *supra* at 17; Weslin Properties v. Department of Revenue, *supra* at 587. This applicant did not actually engage in active adaptation and development of any part of the subject property because it was prohibited from doing so by operation of the municipal zoning ordinances in effect during 2000. Therefore, the holdings in Pearsall and Weslin properties do not apply herein because the subject property remained vacant, and therefore undeveloped, throughout that tax year.

Nor does the holding in Mount Calvary Baptist Church v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998), apply herein. In Mount Calvary Baptist Church, the court considered whether a church building that had suffered severe structural damage in a fire could qualify for exemption under the then-existing version of Section 15-40.¹⁰ The church had been regularly used for exempt purposes prior to the tax year in question. However, those uses were severely curtailed throughout the relevant period due to damage from the fire. Mount Calvary *supra* at 666-670.

The court held the church exempt. In doing so, the court was careful to point out that the church was one “which but for the [intervening] fire, presumably would have continued to be used, *as it had been for years*, as a place of worship.” Mount Calvary at

10. That version (which for present purposes is substantially identical to Section 15-40) was found in Section 19.2 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, ¶¶ 482-811, 500.2.

669 (emphasis added). Here, the subject property was not used for “religious” purposes prior to the tax year in question because: (a) applicant did not acquire ownership of it until February 8, 2000; and, (b) the subject property was unimproved as of that date. Dept Ex. No. 2; Stipulation, ¶ 2; Tr. pp. 43-44. Therefore, this case is distinguishable from Mount Calvary in that there was no pre-existing “religious” use from which this applicant was displaced.

Applicant’s deacon, Hosaang Lee, testified that members of applicant’s congregation gathered for regular outdoor prayer services at the subject property during 2000. Tr. pp. 25-26, 36, 82-87, 92-94. *See also*, Applicant Ex. No. 6. He also testified that applicant also held periodic congregational gatherings at the subject property after February 8, 2000. Tr. pp. 84-87. Once again, however, public policy prohibits me from failing to recognize that the applicant so used the subject property for any “religious” purposes at a time when the applicable zoning ordinances rendered it legally impossible for the applicant to use any part of the subject property for any such purposes. Therefore, it was likewise legally impossible for any of the gatherings described in Deacon Lee’s testimony to constitute the type of activity necessary to exempt the subject property from 2000 real estate taxes under the holdings in People ex rel. Pearsall v. Catholic Bishop of Chicago, *supra* and Weslin Properties v. Department of Revenue, *supra*.

Applicant’s proposed adaptation and development of the subject property was also subject to other legal restrictions throughout 2000. For instance, the applicant did not obtain the necessary site approval from the Federal Aviation Administration, which was required to issue such authorization because of the subject property’s proximity to Palwaukee Airport. Tr. p. 45. Nor did the applicant procure any of the requisite building

permits from the Village. Tr. pp. 63-65. These restrictions prohibited applicant from engaging in any construction-related activity on the subject property, and, based upon the facts of record, result from the otherwise total prohibition on any type of “religious” use imposed by the applicable zoning ordinances.

Furthermore, it is the primary, and not incidental, use of real estate that determines its exempt status. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). The applicable zoning ordinances mandate that the subject property remained undeveloped and therefore vacant all through 2000. Consequently, the fact that applicant may have held some incidental “religious” gatherings at the subject property during 2000 is legally insufficient to establish that the subject property was in fact “exclusively” or primarily used for “religious” purposes during 2000, as required by 35 ILCS 200/15-40.

In summary, Section 15-40 of the Property Tax Code exempts only those properties that are actually and primarily used for “religious” purposes during the tax year in question. 35 ILCS 200/15-40. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993); People ex rel. Tomlin v. Illinois State Bar Ass’n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Skil Corporation v. Korzen, 32 Ill.2d 249 (1965). The applicable zoning ordinances rendered it legally impossible for applicant to use the subject property for “religious” purposes throughout 2000. Therefore, the Department’s initial determination in this matter, finding that the subject property was not in exempt use during 2000, should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 05-04-200-011 not be exempt from 2000 real estate taxes.

Date: 12/12/2003

Alan I. Marcus
Administrative Law Judge